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Utah Supreme Court

Gordon S. Little;

Copy

IN THE SUPREME COURT
OF THE
STATE OF UTAH

STATE OF UTAH, Plaintiff & Respeondent; - vs - GORDON S LITTLE Defendant & Appellant.	Case No. 8421

APPELLANT'S BRIEF

Appeal from First Judicial Disrtict Court, Cache County, Utah. Hon: Lewis Jones, Judge.

GORDON S. LITTLE

In Propria Persona
Box 250, Draper, Utah.

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IN THE SUPREME COURT

OF THE

STATE OF UTAH

STATE OF UTAH,
Respondent;

- vs -

GORDON S. LITTLE,
Appellant.

Case NO. 8421

STATEMENT OF THE CASE

Appellant herein was in the District Court of the First Judicial District, County of Cache, State of Utah, accused in an Information of the crimes of Burglary and Grand Larceny (Tr.p.10) allegedly committed January 31st, 1955, to which he entered a plea of "Not Guilty" (Rep. Tr.pp 14-62.) and tried ALONE (No co-defendant) on the 6th day of June, 1955, being convicted on both counts on the 8th day of June, 1955, sentenced to State Prison June 20th, 1955, from which Final Judgement this Appeal is

taken. (TRANS. Vol. 1, pp. 28 - 33.)
Due to the great mass of incompetant and hearsay evidence and the jumbled stories of the witnesses who were put on peicemeal in this case, Appellant sees no object in quoting at great length from it, but will endeavor to confine himself to only the evidence that is necessary to present the questions of Law, necessary to the determination of this case. Most referances herein will be to the Reporters Transcript, (Rep. Tr.) which begins on page 55 of Volume 1 of the Transcript (Tran., the Rep. Tr. page numbers being on the lower right, thus: - 1 -, ect.

The evidence shows Appellant left Boise, Idaho, by Plane, and arrived at Salt Lake City, Utah, the evening of January 27th, 1955; went to Ogden, Utah, on January 28th and to the Ben Lomand Hotel, where the next morning he met Mr. A. R. HASKINS, whom he had previously employed in Boise, Idaho. As testified to

by Appellant he was on a trip to look for new business location, having sold the night club he had in Boise. Therefore, when Haskins rented a car in Ogden January 28th, 1955, they toured the area of towns in the neighborhood of Ogden and Salt Lake City, returning to Ogden they decided to go to Pocatello, Idaho, on January 29th, 1955, and on the way stopped at THEURER'S STORE in Richmond, Utah, Haskins buying a pair of coveralls to use in case they had tire trouble. Appellant and Haskins made the trip to Pocatello and returned late on the night of January 29th, 1955, to Ogden, where they rented a room in a Motel and stayed that night. The next night Appellant Little stayed in the Motel alone, while Haskins went out and did not return until early the morning of January 31st, 1955, (Rep. Tr. p. 214-,L.2-8.) Having decided that none of the places he had seen were suitable for a new business in this area, Haskins returned the car, and he and Appellant bought Bus Tickets for the return to Boise, Idaho, withma stopover at Twin

Falls, Idaho. Before they got on the Bus, Appellant checked three (3) suitcases (Ex. 3,4,5) to Twin Falls, and Haskins checked his three (3) suitcases (Ex. 6,7,8.) through to Boise, Idaho.

In the mean time, it seems that Theurer's Store in Richmond, Utah, had been burglarized, and the Appellant Little and Haskins were arrested in Twin Falls, Idaho; Little's baggage was seized at Twin Falls, and it was alleged that some home carpenter tools he had in one of them were "Burglar Tools" set. As testified to by the Appellant, Chief of Police GILLETTE of Twin Falls, even added an 18 inch crowbar to Little's belongings, and afterwards said it was in one of Little's bags. (Ex. 3.) On the other hand, Mr. HASKINS suitcases were seized at the Bus Depot in Boise, Idaho, and a large assortment of property alleged to have been stolen from the Theurer Store was found therein. (Rep. Tr.pp. 64,65,68 L. 20-29.)

Both Appellant Little and Mr. Haskins were

returned to Logan, Utah, and charged in an Information No. 978 (Trans.p.10.) of the crimes of Burglary and Grand Larceny in Theurer's Store, to which they pleaded "Not Guilty"; but after both Little and Haskins had made and been Denied Motions for seperate trials; Haskins on the 20th day of April, 1955, pleaded 'Guilty' to the charges, was placed on sentence and conditional probation, thereby closing the case as far as Haskins was concerned (Trans.Vol.2,pp. 398-413) Leaving ONLY defendant Little who was put on trial a month and a half later, on June 6, 1955. The State, having NO evidence to connect Little with the alleged offenses, perpetrated the fiction that Mr. A. R. Haskins was a co-defendant, just as though he was on trial with Mr. Little, in order to introduce a confusing mass of largely hearsay and repetitive evidence relating solely to Haskins and the "Possession" of the stolen property by Haskins, agenst Little in order to mislead, prejudice the Jury that they

convicted Appellant solely upon the evidence relating, solely and too, and against Haskin's. The State also made much of the fact that Little accompanied Haskin's when he bought a pair of Coveralls in Theurer's Store (Rep.Tr. p.-16-,L. 7-14) and of the fact that witness Mildred Andrew testified (Rep.Tr.pp.24-27.) that about 3 o'clock on the afternoon of the 29th of January two strangers (Little & Haskins) momentarily parked in the driveway by Theurer's Store, looked in the Store Window, drove in the Alley, turned arround, found a parking space down the street, returned to the Store and bought a pair of coveralls, all this was given a sinster aspect in the eyes of the jury by Mrs. Andrew's statements that "They were strangers", that, "They looked suspicious", that, "They looked in the Store Window"; just as though driveways were not for cars to drive in, just as though Store Windows were not to be looked in for the display of merchandise, "To be Looked At", as though any, and all people whom she had not

seen before, was a monster and "Looked Suspicious Regarding the car hired by Haskins and Little in Ogden, the State evidently contends through Vada Spackman (Rep.Tr.pp. 30-40) that it was used in the burglary of Theurer's Store; but no identification was made, and the State could very easly have compared the prints of the tires on the car and the tracks left by the car that backed up to the back of Theurer's Store, but such evidence is conspicious by it's absence. Aslo a basic issue in this case is the fact that although Haskins pled 'Guilty' was sentenced and placed on probation on the 20th day of April, 1955, (Trans.pp 398-413) thus disposing of the case against Haskins. Yet, on the Trial of Appellant Little on the 6th day of June, 1955, a month and a half later, the State in perpetrating the Fraud that Haskins was a co-defendant in order to introduce evidence of "Poessission" of stolen goods by Haskins as evidence against Little, who knew nothing of them, and the Court, by its instruct-

ion No. 11, placed the burden of proof on Appellant Little to make "Satisfactory" "Explaination" of the "Poessession" of stolen property by Mr. A. R. Haskins (Trans.Vol.1,p.20) Also pertinent to this case is the fact that at no time was any definate value placed on any items alleged to have been stolen, (Rep. Tr.p.13 L.19,20,22) Also pertinent is the fact that no identification of any of the property made. Mr. Theurer simply claimed anything that was shown him, saying: "Yes, this is mine, this mark was put on here by one of my employees" But no employees were ever produced to verif this hearsay.(Rep.Tr.p.132 L.29-30, p.133 L. 8-9 11,12, 17-28, p.134 L.8,9, 12-13, 18) Also Mr. Theurer admitted that his clerks could have sold the articles in evidence (Rep.Tr.p.21 L.14-16, p.22 L. 2,5,13,22, P.169 L.14-24) Finally Mr. Theurer admitted that he could NOT recall any specific item as having been in his store prior to the January 31st date, of the alleged burglary. (Rep.Tr.p.222 L.14 - 19)

ARGUMENTS AND AUTHORITIES

POINT ONE

THE VERDICT AND JUDGEMENT IS CONTRARY TO THE EVIDENCE AND LAW.

* * * * * * * * * *

Assignments of Error under POINT ONE:

(1)- The Court erred in Denying the Motion to Dismiss the charge of Larceny (Rep. Tr. p. 159, L. 2-6);

(2)- The Court Erred in Denying the Motion to Dismiss the charge of Burglary (Rep. Tr. p. 174, L. 4-11);

(3)- The Court Erred in Denying the Motion for a Directed Verdict of 'Not Guilty' on both Counts (Rep. Tr. p. 300, L. 30, p. 301, L. 1-3.);

(4)- The Court Erred in Denying the Motions for a new trial and in Arrest of Judgement, (Trans. P. 27; Rep Tr. p. 251, L.4-30, P. 258, L.25-29.)

Under the Evidence in this case, the foregoing Assignments of Error will be presented as being together as a related group.

Appellant submits that the Evidence in this case shows as a matter of LAW, that there was no connection made between the alleged burglary and Defendant Little, and that the evidence in regards to Larceny related solely to Mr. A. R. HASKINS, who was NOT on Trial.

As stated before the alleged burglary and Larceny occured on the 31st day of January, 1955; on the 6th day of June, 1955, the date of the Trial, Mr. Theurer, the owner of the [redacted] Store said to have been burglarized appeared as witness with a list of items said to have been stolen, which he had made up that morning --at home, over Four (4) months after the Alleged burglary; Asked how he would know that the list was correct if he just made it

that morning, he answered: "A - I can remember most of the items" (Rep. Tr. p. 12-, Lines 5-8.)

Mr. Theurer did not have the list with him which he said he had made right after the burglary (Rep. Tr. p. 163, L. 23-24)

Mr. Theurer admitted he could not recall any items in the suitcases, (Pr's. 6, 7, 8.) as having been in his store on Saturday, January 29, 1955, and that his help could have sold those items alleged to have been stolen prior to January 3, 1955, the date of the alleged burglary (Rep. Tr. p. 169, L. 14-24.)

Not only that , but Mr. Theurer repeatedly admitted that his Clerk's could have sold the allegedly stolen articles prior to January 31st, (Rep. Tr. p. 21, Lines 14 - 16;
p. 22, " 2,5,13,22;
p. 165 " 9 - 17;
p. 169 " 20 -24.)

Mr. Theurer stated that he took an Inventory of his stock January 1, 1955. (Rep. Tr. p. 172, L. 27 - 30.) And made another Inventory right after the alleged burglary on January

31, 1955, (Rep. Tr. p. 165, L. 6 - 17.); Yet he did not compare these two Inventories to ascertain what articles, if any, were missing, (Rep. Tr. p. 173, L. 1 - 3.) Mr. Theurer claims to have been able to "Remember" everything that was taken, but he admitted that he could not "Remember" if all four (4) of his employees or Clerk's worked on Saturday January 29, 1955, the Saturday before the alleged burglary. Although he was in his Store all that day, (Rep. Tr. p. 20 lines 5 - 10, 11 - 13.) If Mr. Theurer could not remember and account for only four (4) employees, how could he have such a remarkable memory in regards to the numerous allegedly stolen articles?

And Mr. Theurer finally admitted that he didn't inventory everything that was taken, (Rep. Tr. p. 13, L. 22 - 25.) In regards to the charge of Grand Larceny, it is pertinent to consider that at no time was any definate valuation ever placed on any of the numerous articles

placed in evidence, and Mr. Theurer admitted that he had"never figured the value" (Rep. Tr. p. 13, L. 19 - 20, 22 - 24.) Further, there was no positive identification ever made of any of the articles in Evidence by Mr. Theurer, although with covetous manner, he attempted to claim everything shown him, by saying: "Yes, that's mine, this price mark was placed on there by one of my employees", (Rep. Tr. p. 79, L. 29 - 30; p. 80, L. 8,9, 11,12,17,28; p. 81, L. 8 -9, 12,13,18.); but no such employee was ever produced to verify these statements, and the Appellant contends that they were merly hearsay, and mean nothing. How, Appellant asks, can any value be placed on anything if no one ever figured the value, and no one ever placed a value on any article? And, how can any articles be said to be identified upon hearsay and conjecture?

Among the articles listed in the Complaint, (Trans. p. 2.) and admitted in evidence were

Two (2) Electric Drills, three (3) suitcases, high speed drill kit, steel tape, and pocket knives. It is common knowledge, that Electric Drills and ect., have "Brand Names" and "Numbers". And it is common knowledge, that whenever a Store Owner buys such articles as Electric Drills, he is given an Invoice-listing of the "Serial Numbers", "Brand Names", "Model Number" and ect., which identifies the article, and said "Identification" is 'Imprinted' and onto the article itself, as a means of Identification; in fact, it is the ONLY positive means of 'Identification' of such mass produced articles.

But in the instant case, there was No allegations of any such Brand Names, Model Numbers or Serial Numbers, NO listing of nay such, and NO 'Identification' made on such basis.

In STATE v WHITE (1944) 152 P.2d 80, at 81 the Supreme Court of the State of Utah said:

" (1) (1) The rule relating to the identification of stolen property is stated in 17

R. C. L., Sec. 70, p. 65, as follows: "The prosecution must identify stolen property found in the Possession of the accused with that for the theft of which he is indicted, and this must be done by the most direct and positive testimony of which the case is susceptible."

In STATE v KUHNLEY, 242 P. 2d 843, the Supreme Court of Arizona held: Syllabus:

"5. Recieving stolen goods.. In Information charging receipt of stolen goods, the property must be described with certainty and accuracy and with sufficient particularity to enable the Court to determine that such property is the subject of larceny, to advise accused with reasonable certainty of property meant and enable him to make needful preperations to meet such charge at trial, to enable jury to determine whether stolen property proved to have been recieved was the same as that upon which indictment was founded, and to enable accused to plead the verdict in bar of a subsequent prosecution for unlawfully recieving the same articles or goods."

"6. Revieving stolen goods: Where information charging stolen property consisting of two sewing machines, a saw, a radio, and two typewriters, knowing the property to have been stolen, failed to set out the serial numbers and trade names of the property, the Information was fatally defective in that it did not adequately describe the properties involved." See opinion at pp. 846 - 847, of 242 P. 2d.)

In STATE v HALL, 139 P. 2d 228, at 230, this Supreme Court of the State of Utah, held:

(3) "Under the authorities, it is clear that the State must definitely identify the goods found in the defendant's possession as the goods which were charged to have been stolen before a jury may draw an inferance of guilt based upon proof of possession by the defendant of such goods." Nelson v State, 29 Ala. App. 121, 192 So. 594; State v Williams, 102 Ore. 305, 202 P. 428; State v Mattioker, Mo. Sup., 22 S. W. 2d 647; Moore v Commonwealth, 229 Ky. 765, 17 S. W. 2d 1021; Carter v State, 57 Ga., App. 180, 194 S. E. 842."

And at page 231, it held:

(6) "Theconclusion that the State failed as a matter of Law to identify the plugs disposes of the case for without such identification the jury could not draw the inferance of guilt under section 103 - 36 - 1. Without this inferance of guilt there is not sufficient evidence to support the conviction."

And this same ruling was adhered to in:

STATE v HALL, 145 P. 2d 494, at 496, Op.#3

As to the value of the property in this case, it was "NEVER FIGURED" and none of the items in evidence ever had any value placed on them.

In STATE v LAWRENCE (Utah 1951) 234 P. 2d 600, this Supreme Court held, at page 601:

" (1-4) This is not a case where the defendant either expressly or impliedly admitted to the value, nor by conduct or statements of himself or counsel, allowed it to be assumed that the matter was not disputed. His plea of not guilty cast upon the State the burden of proving every essential element of the offense by evidence sufficient to convince the jury beyond a reasonable doubt. In a charge of Grand Larceny, one of those essentials is that the value be greater than $50.00 A conviction for that offense cannot stand unless there is satisfactory evidence of the value of the property. State v Harris, Mo., 267 S. W. 802; People v Leach, 106 Cal. App. 442, 290 P. 131.. Ordinarily, judicial notice will not be taken of the value of personal property, 31 C. J. S., Evidence, S 101, page 701, and as will later appear herein, this is unquestionably so in connection with the instruction given in this case."

Furthermore, there is no evidence to connect Appellant Little with the alleged burglary, or that he ever had "Possession" of any of the alleged stolen property.

In STATE v CRAWFORD (Utah) 201 pac. 1030, at 1032, this Supreme Court said and held:

"(4) A question far more serious, however, is presented in defendant's contention that the evidence is insufficient to sustain the verdict, and that the court erred in not directing a verdict for defendant. We have stated the substance of all the evidence produced at the trial on the part of the state, The defendant himself was sworn as a witness and

protested his innocence. We are unable to find in the record a scintilla of evidence tending to connect defendant with the burglary unless it be held that the finding of the articles mentioned in the room occupied by him and another established a connection. There was nothing tending to show a conspiracy between him and Austin. There was nothing to show that the articles in question were in his exclusive possession or that he ever saw them before, until they were discovered by the officers.

(5) Defendant admitted he had served a term of imprisonment in California. This went to his credibility only. It in no sense tended to show that he had committed the offense for which he was tried and convicted. There was no evidence whatever tending to show or condridict any statement he made respecting his lack of knowledge concerning the articles found in his room, nor were the circumstances such as to do more than create a bare suspicion of his guilt."

This case was quoted and re-affirmed in STATE v NICHOLS (1944) 145 P. 2d 802, at 805.

In STATE v KINSEY, 295 Pac. 247, this Supreme Court said and held, at mid left of page 249:
"(1-2) At the conclusion of all the evidence the defendants asked for a directed viadict of not guilty on the ground that the evidence was insufficient to connect the defendants with the commission of the offense. That Motion also was refused. The jury convicted the defendants as charged in the information. We are of the opinion that both Motions ought to have been granted. The state argues that the mere or bare suspicion, possession of the

goggle recently stolen was sufficent to justify the verdict, and that the jury was not required to believe the testimony of the defendant's that they had no knowledge of the goggle being in the car. Possession of the articles reciently stolen, when coupled with circumstances of hiding or concealing them, or of disposing, or attempting to dispose of them, or of making false or unreasonable or unsatisfactory explainations of the possession, may be sufficient to connect the possessor with the commission of the offense. But mere or bare possession when not coupled with other culpatory or incriminating circumstances, does not alone suffice to justify a conviction.
(Citing cases)

In the last-cited case, and after refering to the prior cases, this Court said: "If only the larceny is shown and the recient possession in the accused, that is not sufficient to justify a submission of the case, and does not warrent a conviction."

(3) Further, the authorities also are tok the effect that the possession must be not only be personal, exclusive, and unexplained, but must also be conscious, or a conscious assertion of possession by the accused.
(Citing cases)

In STATE v NICHOLS, 145 P. 2d 802, this Supreme Court Held: (Syllabus (1)-)

"In prosecution for burglary in second degree where cigarettes were taken at the time offense was committed, but there was no direct evidence to connect defendant with the crime, attempt to introduce hearsay testimony linking defendant with sale of cigarettes and dividing proceeds with another, who pleaded guilty to the offense, was prejudicial error, even though testimony was ordered stricken out."

And, in its Opinion at mid left page 806,

this Court said:

"We do not think there was sufficient evidence before the jury to justify a conviction of larceny, had that offense been charged in the indictment; and we are also of the opinion that the naked possession of stolen property from 6 to 24 hours after the larceny or housebreaking, when unaccompanied with other criminating fact or circumstance tending in some degree to connect the accused with the commission of the offense charged, is not sufficient evidence, of itself, upon which to convict of housebreaking. The offense of housebreaking is one degree further removed from the act of larceny, and the mere, or bare possession of stolen goods does not have the same tendency to connect the accused with the burglary or housebreaking as it would be with larceny. (Citing cases.)"

Appellant submits that the foregoing cases cited are the LAW as far as the State of Utah is concerned, in Burglary and Larceny cases; but it but takes the application of the principals enunciated therein to the facts of the instant case to secure a Reversal; but no doubt the State will make much ado over the fact there was much evidence against Mr. A. W. HASKIN, but he was a co-defendant, and that therefore

the admission of the alleged stolen property in the exclusive 'Possession' of Mr. Haskins was admissable against Appellant Little.

But Appellant wishes to remind this Court that: When he (Little) was tried, he was tried ALONE, Mr. Haskins having pled guilty to the charge of Burglary a month and a half before, and the charge of Larceny against him DISMISSED, (See: Rep. Trans. P. 42; Tr. page 175, L. 22- 30.) therefore he (Haskins) was not a co-defendant upon the trial of Appellant Little, and the State's contending that he was a co-defendant is a pure fiction, a smoke screen behind which to mask the introduction of evidence relating solely to Haskins, for the purpose of misleading and befuddling the jury into convicting Little, who was tried ALONE, and to whom such evidence of 'Possession' ect., had not the least connection.

There was no proof of any consipracy or joint action by Appellant and Haskins in regards to the crimes charged, therefore there was no

basis for the introduction of the allegedly stolen goods in the exclusive 'Possession' of Haskins as against Little, Appellant submits that before any such stolen property in the 'Possession' of Haskins, could be admitted in evidence against Little, that it was necessary for the State to furnish proof that they conspired and acted together in the alleged burglary; that such alleged stolen property could not by itself lay a presumptive foundation for its admittance, and then when it was admitted give rise to another presumption of 'possession' as against appellant, and by such presumption 'possession' then give rise to a third presumption of guilt of the crimes of burglary and larceny charged.

Appellant submits that before a presumption can arise, the facts to support it must be in evidence, that a presumption can not be based upon a presumption.

Without the presumption against him from the

'possession' of the allegedly stolen property in the exclusive possession of Haskins, therein NO evidence whatever to even connect the Appellant Little with the alleged crimes of Burglary and Larceny, therefore the Judgment as to appellant Little should be reversed;

(STATE v LAUB, 102 U. 402, 201 P. 2d 805;
PEOPLE v GILLIS, 6 U. 84, 21 P. 404;
STATE v REESE, 44 U. 256, 140 P. 126;
STATE v CRAWFORD, page 18, supra.;
STATE v NICHOLS, page 20, supra.;

POINT TWO

THE APPELLANT WAS DENIED HIS STATE AND FEDERAL CONSTITUTIONAL RIGHT TO A "FAIR TRIAL," UNDER THE "DUE PROCESS OF LAW" CLAUSE OF SECTION ONE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

* * * * * * * * * * *

Assignments of Error Under POINT TWO:

(5) The Court Erred in Denying the Motion to Quash the Information;

(6) The Court Erred in holding that Mr. Haskins was a co-defendant, and in admitting evidence relating solely to Haskins as against Little, the only person on Trial;

(7) The Court Erred in permitting the State to repeatedly have its witnesses Point out, and testify regarding, Mr. Haskins, who was not on Trial, and not a witness;

(8) The Court Erred in Denying "PRO FORMA" the various Motions and Objections made by Counsel for Appellant Little;

Assignment of Error under POINT TWO, cont.:

(9) The Court Erred in giving Instruction Number Four (4).;

(10) The Court Erred in giving Instruction Number Eleven (11).;

(11) The Court Erred in Denying the Motion for a New Trial, and Motion in Arrest of Judgment.

* * * * * * * * *

First, as to assignment No. 5,;

The Appellant made a Motion to Quash the Information in this case, arguing several different grounds for so doing, among them that there was no description of the allegedly stolen articles, in the Amended COMPLAINT at TRANS. P. 2, it readily appears that there were a number of articles allegedly stolen which always carry Brand Names, and several such as the Two (2) Electric Drills which always have in addition to the Brand Names

the Model and Serial Numbers on them as a positive means of identification, that such is the ONLY means of Identification on such mass-produced articles. It is common and general knowledge of which Judicial Notice may be taken, that upon a Store Owner such as Mr. Theurer buying and such articles, he is given an INVOICE listing the Brand Names, Model Numbers and Serial Numbers of all such articles; but in the instant case no reference is made, and no identification attempted on such basis, the ONLY basis upon which the articles could have been positively identified.

As held by the Supreme Court of Arizona, in STATE v KUHNLEY, 242 P. 2d 843, at page 847:

"(6) In the instant case the property was capable of a complete, exact and definate description. This is not an instance where the goods are homogenous, The County Attorney with a minimum of effort could have ascertained these identification marks and described the property so that there would be no doubt as to which property the defendant was charged with receiving,

as the evidence shows that all the articles have serial numbers and bear well known trade names. We hold that the description was not sufficient to permit the defendant to plead former jeopardy as he could have been subsequently tried for receiving these same goods. For this reason we hold the information was fatally defective."

As to Assignment of Error No. 6.:

As shown before, throughout the Trial of the Appellant Little, the Trial Court permitted the State to perpetrate the Fraud that Mr. A. R. HASKINS was a Co-defendant with Little, when in fact he was nothing of the sort; for HASKINS had, a month and a half previously, plead 'Guilty' to the charge of Burglary, and the charge of Larceny as to him DISMISSED , (Trans. Vol. 2, pp. 398 - 413; Trans. Vol. 1, pp. 42; Rep. Tr. 175, lines 22 - 30.) upon Motion of the District Attorney; therefore Appellant submits that Mr. Haskins having been sentenced and placed on probation on the Burglary charge, and the Larceny charge against him DISMISSED , he could NOT be held to be a Co-defendant with defendant Little who was

Tried ALONE on the 6th day of June, 1955, and this stratagem by the State, condoned by the Trial Court, to convict defendant Little on evidence of allegedly stolen goods in the exclusive 'possession' of Mr. Haskins, who was NOT on Trial, and NOT even at that date charged with Larceny, was a sheer Denial of "DUE PROCESS OF LAW", for there is no showing that Appellant Little had any knowledge whatsoever as to the contents of the Three (3) suit-cases (EX's 6, 7 and 8) which Mr. Haskins had in his sole 'possession' and shipped to Boise, Idaho, where they were seized, nor is there any showing that the two men conspired to commit any crime together. The mere fact that Appellant knew and associated with Mr. Haskins does not prove that there was any discussion and meeting of minds between the two in regards to any criminal undertaking. Appellant submits that the instant case is an arbitrary one of 'Guilt by association' of the worst order, which is not supposed to happen in this fair land of ours.

That Mr. Haskins, not being on Trial, and not even having any conviction or charges pending against him for Larceny, there was not the slightest legal excuse for the introduction of any of the articles in the 'exclusive' 'possession' of Mr. Haskins in evidence against defendant Little.

As to Assignment of Error No. 7.:
As stated before, Mr. Haskins was NOT on Trial, he was NOT a Co-defendant, and NOT a witness; nevertheless the Trial Court permitted the State to bring Mr. Haskins into the Courtroom, and throughout the Trial have the State's witnesses, while supposedly testifying against defendant Little, to point out, identify and TESTIFY regarding Mr. Haskins, as follows:

By State's Witness THEURER - Rep. Tr. p. 16, L. 15 - 28;

By State's Witness WARD - Rep. Tr. p. 36, L. 3 - 15;

By State's Witness LAMBROSE - Rep. Tr. p.

42, L. 9 - 17;

By State's Witness SPRINGMAN - Rep. Tr. p.

45 - 46, 52;

By State's Witness OBERHANSLE - Rep. Tr. p.

56, L. 5 - 11.

In PEOPLE v ROBARGE, (Cal. App. 1952) 244 P. 2d. 407, the Appellate Court Held:

"3. Criminal Law.
In robbery prosecution, bringing defendant's brother into courtroom from County Jail and identifying brother as participant in robbery for which defendant alone was on trial was improper conduct and denied defendant a fair and impartial trial."

In this case of PEOPLE v ROBARGE, at page 411 - 412 of 244 P. 2d, the Court in its Opinion, said among other things:

"(2,3) From a reading of the record we are constrained to say that it would be an impeachment of the legal learning of counsel for the people in intimate that k he did not know the aforesaid procedure was improper, and peculiarly calculated to prejudice the substantial rights of k the accused."

A good statement as to the proper decorum of a prosecutor is contained in BERGER v UNITED STATES, 295 U. S. 78, 88, 55 S. Ct., 629, 633, 79 L. Ed. 1314, 1321:

"" (a prosecutor is) "* * * in a peculiar and very definate sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence

suffer. He may prosecute with earnestness and vigor * * * But while he may strike hard blows, he is not at liberty to strike f fould ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

As to Assignment of Error No. 8.:

The trial Court throughout the Trial, Denied all Motions and Overruled all Objections of the Appellant's Counsel Mr. Oliver, without giving him a chance to argue them, at the very start of the Trial (so-called) at, Rep. Tr. p. 2, L. 2; page 16, L. 23 - 28; the Record shows as follows:

"THE COURT: Pro Forma the objection is overruled."

And the same highanded manner of the Trial Court, Hon. LEWIS JONES, Judge, appears throughout the Transcript. No doubt Judge LEWIS JONES keeps in mind his Military experience, when he sat on a Court Martial and dispensed 'Drumhead Justice', but Appellant submits that the procedure is supposed to be different in a Trial by Civil Authorities, and due regard

given to the rights of the defendant, that he is entitled to at least a short hearing on his Motion and Objections, not to be cut off with a curt 'Denied, ect.,'

Appellant submits that his Counsel Mr. Oliver, had good cause to offer Argument on his Motions and Objections, that he is quite familiar with Larceny cases such as the instant one, and in fact secured a Reversal on Appeal in the case of STATE v LAWRENCE, 234 P. 2d 600, Cited at page 17, supra; therefore his arguments have merit. Appellant contends that the Trial Court, through Judge JONES, denying and overruling his Motions and Objections in such a summary manner, in many cases using the words 'PRO FORMA', simply turned a Legal Proceeding into a PRO FORMA TRIAL.

As to Assignment of Error No. 9., that the Trial Court Erred in giving Instruction No. .., (Trans. page 18.) This instruction assumes and passes on to the Jury a number of theories

pon which there is absolutely NO evidence gainst Appellant. There is no evidence that e was concerned in the commission of the rime, no evidence that he commited the act r abetted in its commission. (See: Objection ade, Rep. Tr. p. 248, L. 30, p. 249, L. 5.)

ssignment of Error No. 10.:

he Court Erred in giving Instruction No. 11.; Objections made, Rep. Tr. p. 249, L. 10- 29.)

he First paragraph on Instruction No. 11, ssumes facts nowhere in evidence, is erron- ous in Law, confused and mislead the Jury in- o believing that 'possession' of stolen prop- rty by Mr. Haskins tended to show the guilt f the accused and ONLY defendant Little, and reads as follows: as at Trans. p. 20 :

> "The mere possession of stolen property, howsoever soon after the taking, unexplained by the person having possession is not sufficient to justify conviction. It is however, a circumstance to be considered in connection with other evidence in determining the question of innocence or guilt. If you should find from the evi-

lence that the property in this case was stolen, and that thereafter the defendant was found in possession or claimed t be the owner of the stolen property, such a fact would be a circumstance tending in some degree to show guilt, although not sufficient, standing alone and unsupported by other evidence, to warrent finding him guilty. In addition to proof of possession of such property there must be proof of corroborating circumstances tending, of themselves, to establish guilt. Such corroborating circumstances may consist of the acts, conduct, falsehood, if nay, or other circumstances tending to show the guilt of the accused.

There is no evidence anywhere in this case that the accused defendant Little ever had 'possession' of any of the alleged stolen propprty; the possession having been shown to be the sole and exclusive possession of Mr. A. R. Haskins, who was not on Trial, was not a co-defendant as fraudulently claimed by the State, and did not even have a Larceny charge pending against him; therefore, he, Mr. Haskins was not called upon to explain such possession and the accused Appellant not having been shown to even had any knowledge of the stolen property, he submits that such unknown possession

by another could not be held a circumstance tending to show his guilt, either alone or with another evidence.

STATE v CRAWFORD, (Utah) 201 Pac. 1030, at 1032, quoted at page 18 supra.;

STATE v KINSEY, (Utah) 295 Pac. 247, at 249, quoted at page 19, supra.;

STATE v NICHOLS, (Utah) 145 P. 2d 802, Syll. (1), and Op. p. 806, quoted page 20, supra.

The second paragraph of Instruction No. 11, places the burden of proof on Defendant Little, who was on Trial, to explain through Mr. A. R. Haskins who was not on Trial, NOT a co-defendant and NOT a witness, who had sole and exclusive 'possession' of the allegedly stolen goods, of which Defendant Little knew nothing and never had in his possession, such 'possession' by Mr. Haskins, thus placing on Defendant Little the unjust and impossible burden of proving this innocence by disproving or explaining the unknown acts of another, Said 2nd Paragraph of Instruction No. 11, reads as follows:

"One who is found in the possession of stolen property is bound to explain such possession in order to remove the effect of that circumstance, to be considered with all the other evidence, pointing to his guilt, and if he gives a false account of how he acquired possession or having reasonable oppertunity to shew that his possession was honestly acquired, he refuses or fails to do so, such conduct is a circumstance which might, with all the other circumstances, be considered in determining whether or not the jury is convinced beyond a reasonable doubt of the defendants guilt.

(See; TRANS. p. 20; underlinging Appellants)

In the first place, the one who was found in exclusive 'possession' of stolen property in this case, was Mr. A. R. Haskins, who was not either a co-defendant or under a charge of Larceny at the Trial of defendant Little, yet this 2nd paragraph of Instruction No. 11, Instructs the jury that it might be considered in determining defendants guilt, that is the ONLY defendant in this case, Gordon S. Little, who never had any such stolen property in his possession. Further, Appellant submits that any defendant is NOT "bound to explain such possession", or to "show that his possession was

honestly acquired."

In HUGHES v STATE, 185 P. 2d 236, 237, t the Criminal Court of Appeals of Oklahoma, stated in its Syllabus, the rule to be:

"5. An instruction which places the burden upon a defendant of producing evidence to prove his innocence is prejudicial and will require reversal of the case."

In HOGE v PEOPLE (Illinois) 6 N. E. 796, an Instruction similar to the one in the instant case
instant case was condemned, the Court Held:

"A defendant in an action of larceny is not required to "satisfactorily" explain his recient possession of stolen property in order to rebut the presumption of guilt arising therefrom; and where an ALIBI is relied on, it is not the rule of law that the ALIBI must be "clearly and satisfactorily" established where the evidence otherwise makes a PRIMA FACIE case against the defendant. The burden is on the people throughout; and if, after considering the evidence introduced by him as to either of both of these questions, in connection with all the other evidence in the case, and giving all due consideration to the entire evidence, the jury shall have a reasonable doubt of the defendant's guilt, he cannot be convicted.

At bottom of page 799 and top of page 800, the Court said:

"To require the defendant to "Satisfac-

torily" explain his recent possession of the stolen property, and to "satisfactorily" establish an Alibi before it can prevail, is imposing a burden on him but little short of convincing a jury beyond a reasonable doubt."

In VAN STRAATEN v PEOPLE (Colorado) 56 Pac. 905, and Instruction similar to the one in the instant case was condemned, the Court in its Syllabus Held:

"2. The presumption of guilt arising from the possession of stolen property recently stolen is one of fact, and hence a charge that such possession is, "in law, a strong criminating factor", is error.

"3. One found with property recently stolen is not bound to "satisfy" the jury that he came into its possession honestly. He need only raise a reasonable doubt in their minds."

In CALVERESI, et al., v UNITED STATES (1954) 216 F. 2d 891, at bottom left of page 905, the 10th Circuit U. S. Court of Appeals said:

". . . Whenever a circumstance relied on as evidence of criminal guilt is susceptible of two inferances, one of which is favorable to innocence, such circumstance is robbed of all probative value and is insufficient to support a judgment of guilt."

The third paragraph of Instruction No. 11, also assumes facts nowhere in evidence, and presents to the jury issues with which they were not concerned, as at Trans. p. 20, as follows:

> "You are further instructed that should you find from the evidence and beyond a reasonable doubt that the defendant and Haskins both broke into the Theurer Store, both removed certain property therefrom, and were then and there jointly engaged in the commission of a felony, then the law permits you to draw the inferance, if you so choose, that the possession (thereafter) by either of the said defendants of any of the property stolen is the possession of both.

In the first place the ONLY person on Trial in the instant case was the Appellant LITTLE, that as to Mr. HASKINS, there were no longer any charges against him, the charge of Larceny having been DISMISSED (Trans. page 42; Rep. Tr. p. 175, lines 22 - 30.); thereafter, there was no issue before the Jury 'TO FIND' that defendant AND HASKINS BOTH broke into...BOTH removed...JOINTLY ENGAGED in the commission of a felony...' That the case of Haskins was NOT

Appellant submits that the Jury could NOT make any finding whatsoever as to anything that Mr. Haskins may have done.

In the second place, there is NO evidence whatever in this case that Appellant Little ever conspired with, or acted jointly with, Mr. Haskins in the commission of the alleged burglary, in the breaking into Theurer's Store, or the removal of certain property therefrom. Also there is no evidence whatsoever that the Appellant Little even knew that Mr. Haskins had any stolen property in his possession; therefore, he submits that the unknown, sole and exclusive possession of such stolen goods in Mr. A. R. Haskins, can not be deemed to be also a 'possession' by Appellant LITTLE, and held against him as evidence of guilt of a crime he knew nothing of.

That for these reasons and other reasons as given supra., the whole of Instruction No. 11, was very prejudicial to the Appellant's substantial Rights, and Denied him a 'Fair Trial'

*** ***

P O I N T T H R E E.

UTAH'S LARCENY STATUTE, UTAH CODE OF 1953 SECTION 76-38-1, IS UNCONSTITUTIONAL, AS WRITTEN CONSTRUED AND APPLIED, UNDER SECTION ONE OF THE THIRTEENTH AMENDMENT, AND THE "D U E P R O C E S S O F L A W" CLAUSE OF SECTION ONE OF THE FOURTEENTH AMENDMENT, TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

IN THAT: Utah's Larceny Statute, under which Appellant was convicted, Nullifies, Denies to, Violates and Destroys a Defendant's Legal and Constitutional Rights, as follows:

FIRST. Utah's Larceny Statute Nullifies the rule of LAW that when a person FAILS to testify, it shall not be held against the defendant by the Court and Jury;

SECOND. Utah's Larceny Statute Denies to, and Violates a Defendant's Constitutional Right to a "F A I R T R I A L" on Legal Evidence by a Fair and Impartial Jury;

THIRD. Utah's Larceny Statute Nullifies and Destroys the 'Presumption of Innocence' with which a Defendant is endowed by LAW;

FOURTH. Utah's Larceny Statute Violates and Destroys the Defendant's Right that the State shall assume and bear the 'Burden of Proof' throughout the Trial, and prove all of the Essential Elements of the alleged crime;

FIFTH. Utah's Larceny Statute as applied to convict a defendant on a presumption instead of legal evidence, Denies to and Violates his Constitutional Right under the 13th Amendment to the Federal Constitution - that: "Neither Slavery nor Involuntary Servitude, except as a punishment for crime whereof the party shall have been D U L Y convicted shall exist...."

SIXTH. Utah's Larceny Statute does NOT furnish an 'Ascertainable Standard or Test of Guilt', by the words - "Satisfactory Explaination";

SEVENTH. Utah's Larceny Statute Denies to a Defendant His Constitutional Right to -- "D U E P R O C E S S O F L A W" under Section One of the Fourteenth Amendment to the Constitution of the United States.

* *

ARGUMENTS AND AUTHORITIES ON POINT ONE

Utah's Larceny Statute, Utah Code of 1953,

Section 76 - 38 - 1, reads as follows:;

> "Larceny is the felonious stealing, taking, carrying, leading or driving away the personal property of another.
> Possession of property recently stolen, when the person in possession fails to make a satisfactory explaination, shall be deemed prima facie evidence of guilt."
> (underlining appellant's)

The first part of this Statute, as seen sets forth the essential elements of the crime of Larceny, all of which Appellant submits should

be proven by the State before a Defendant can be convicted of such acts, and with this first part of the Statute he has no quarrel; However, the second part provides that:

"Possession ... when the person ... FAILS TO MAKE - A 'SATISFACTORY' EXPLAINATION, shall be deemed PRIMA FACIE evidence of Guilt."

This part of Utah's Larceny Statute is, the Appellant contends - UNCONSTITUTIONAL. FIRST. This Larceny Statute Nullifies the Defendant's Statutory Right that if he fails to testify it shall not be held against him (U. C. A. 1953 Section 77 - 44 - 5.) For this Statute by its plain words provides that if the person in possession fails (to testify) to make ax'Satisfactory Explaination', it shall be deemed Prima Facie Evidence of Guilt; and in the instant case the matter of 'possession' lay solely in Mr. A. R. HASKINS who was not on Trial, yet under this Statute, because he

did not make, and Defendant Little could not make a 'Satisfactory Explaination' for another, for possession he knew nothing of, it was held to be 'Prima Facie' Evidence of Guilt, of the LONE Defendant Gordon S. Little.

In PEOPLE v ZOFFEL, (Cal. App.) 95 P. 2d 160, the Court Held:

"3. The burden rests on the prosecution and not the defense, and hence the failure of alleged conspirator to take the x stand and deny having written cards which were found in apartment of co-conspirator did not raise any presumption of inferance of guilt."

SECOND. Utah's Larceny Statute Denies to and Violates a Defendant's Constitutional Right to a 'FAIR TRIAL' by an Impartial Jury (Constitution of Utah, Art. one., Sec. 12.), by its provision that mere "Possession" shall be Prima Facie Evidence of Guilt; for the mandatory provision that it shall be so Deemed, and the Instructions given in accord with this Statutory provision, Denies to a Defendant the Right that an Impartial Court and Jury shall

use their own judgment to determine if such 'possession' is evidence of guilt.

In PEOPLE v SCOTT, (Cal. App.) 145 P. 2d 715, at mid left of page 719, the Court said:-

"The vice of the challenged portion of the statute, as we view it, lies in the fact that it leaves the jury free to act upon the presumption alone, once the specified fact of possession is proved, unless the defendant comes forward with opposing evidence. Under the American philosophy of jurisprudence and constitutional guarranties, is this not enough of itself to vitiate the statutory provisions?"

THIRD. Utah's Larceny Statute Nullifies and Destroys the Defendant's right to the Presumption of Innocence, by its Arbitrary provisions that mere 'possession' (in the instant case, by another, several days after the crime and 350 miles away.), constitutes prima facie evidence of the guilt of defendant of the complex crime of Larceny, allegedly that he: "At the County of Cache, State of Utah, did "Steal, Take and Carry Away" certain property. Appellant submits that it is always the duty of

the State to shoulder the 'Burden of Proof' throughout the Trial, and that it must establish by competent evidence, NOT by a statutory presumption, every essential element of the crime charged, that the Statutory 'Presumption of Innocence' abides with the Defendant throughout the Trial, even through the deliberations in the jury room.

See: PEOPLE v SCOTT, (Cal. App.) 145 P. 2d 715, at pages 720 - 721;

In re WONG HANE, 108 Cal. 680, 682, 41 Pac. 693, 694, 49 Am. St. Rep., 138.

FOURTH. Utah's Larceny Statute Violates and Destroys the defendant's Right that the State shall assume and bear the 'Burden of Proof', by providing that without any proof of the essential elements of - stealing, taking, and carrying away, as against a defendant, it Arbitrarily shifts the 'Burden of Proof'; if he, defendant, has mere 'possession' of allegedly stolen articles to prove his innocence

"Satisfactorily" of such charge, that the only way he can prove his innocence 'Satisfactorily' to the Supreme Court of the State of Utah, is for him to prove who did commit the larceny,

(STATE v DYETT, 199 P 2d 155; STATE v POTELLO, 40 U. 56, 119 Pac. 1023; STATE v DONOVAN, 77 U. 343, 294 Pac. 1108.)

Appellant contends that it is not permissable for a Statute to thus place the 'Burden of Proof' to prove his innocence or disprove any element of the crime charged.

PEOPLE v SCOTT, 145 P. 2d 715, at 718-720;

In re WONG HANE, 108 Cal. 680, 682, 41 Pac. 693, 694, supra.;

And see the leading case by the Supreme Court of the United States on this question - MORRISON v CALIFORNIA, 291 U. S. 82, 93, 96 - 97, 54 S. Ct., 281 at 287, 78 L. Ed. 664.

FIFTH. Utah's Larceny Statute as applied to convict and imprison a defendant on a presumption instead of legal evidence Denies to and

Violates his Federal Constitutional Right not to be subjected to 'Slavery and Involuntary Servitude', upon an alleged crime of which he has not been duly convicted; that a presumption such as the one in the instant case in Utah's Larceny Statute can not be Constitutionally used to convict a defendant of crime and punish him by Slavery and Involuntary Servitude, whether in Prison or otherwise, and is therefore Void.

BAILY v ALABAMA, 219 U. S. 219, 31 S. Ct., 145, 148 & 149, 55 L. Ed. 191;

TAYLOR v GEORGIA, 315 U. S. 25, 30 - 31, 62 S. Ct., 415, 418, 86 L. Ed. 615;

POLLOCK v WILLIAMS, 322 U. S. 4, 64 S. Ct., 792, at 798 - 799, 88 L. Ed., 1095.

SIXTH. Utah's Larceny Statute does NOT furnish an 'Ascertainable Standard or Test of Guilt', by the words - "Satisfactory Explaination"; as seen, at page 42, supra., Utah's Larceny Statute U. C. A. 1953 Section 76 - 38 1, provides that if one in 'possession ' of stolen property "FAILS TO MAKE A 'SATISFACTORY' 'EXPLAINATION'"

it shall be Prima Facie Evidence of guilt, of the complex crime of Larceny itself, which is the stealing, taking and carrying away of property; there is definition of what is ment by such a "Satisfactory Explaination", nor even to who is to interpet its menaing. There is no ascertainable test or measure as to the quantum of proof that shall constitute a "Satisfactory Explaination", NO test or standard as to what shall be sufficeint proof by a defendant to overcome the Statutory Presumption of 'Prima Facie' Evidence of Guilt' against him upon the State merely proving that he had 'possession' of stolen goods. Under this Utah Larceny Statute there is not even an Instruction given to the Jury as to what might be an "Satisfactory Explaination", but it is left to the varient day to day views and moods of the various Officers, Courts, and Juries charged with the enforcement of this Utah Larceny Statute, as to what in their Arbitrary Opinion of the moment, of what may or may not const-

itute a "Satisfactory Explaination", and the Appellant contends this is not a sufficient basis upon which to base a judgment of conviction and imprisonment for a long term of years. That any Statute setting up a provision to be enforced or a presumption to be overcome, MUST define and set up an ascertainable Standard of test of Guilt, or be Unconstitutional under the 'Due Process of Law' clause of the Fourteenth Amendment to the Constitution of the United States.

WINTERS v NEW YORK, 333 U. S. 507, 509, 515 - 517, 68 S. Ct. 665, 670 - 671, 92 L. Ed. 840;

LANZETTA v NEW JERSEY, 306 U. S. 451, 455, 59 S. Ct. 618, 83 L. Ed. 888;

CONNALLY v GENERAL CONSTR. CO., 269 U. S. 385, 46 S. Ct., 126, 70 L. Ed. 322;

SCHECHTER POULTRY CORP., v UNITED STATES, 259 U. S. 495, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A. L. R. 947;

HANNEGAN v ESQUIRE, 327 U. S. 146, 66 S. Ct. 456, 90 L. Ed. 586;

HERDON v LOWRY, 301 U. S. 242, 57 S. Ct. 732, 81 L. Ed. 1066;

BURSTYN, Inc., v WILSON, 343 U. S. 495, 502;

UNITED STATES v CARDIFF, 73 S. Ct. 189, 190;

SCREWS v UNITED STATES, 325 U. S. 91, 65 S. Ct. 1031, 89 L. Ed. 1495, 162 A.L.R. 1330;

CITY OF PRICE v JAYNES, (Utah 1948) 191 P. 2d 606, at 607, 609;.

SEVENTH. Lastly in use, Utah's Larceny Statute, both in its written words and as Applied, rates as a sheer Denial of "Due Process of Law" by making the mere 'possession' of any stolen property by a person Prima Facie Evidence of Guilt, if the person FAILS to make 'Satisfactory Explaination' of such 'Possession' of the complex crime of Larceny, the allegation in this case being that Defendant "At the County of Cache, State of Utah, did Steal, Take and Carry Away, certain property; (Trans. pp. 2, 10.)

As shown by the Records in this case, the Jury was by Instruction No. 11, Instructed in accordance with this Larceny Statute, that the 'possession' of stolen property by Mr. A. R. Haskins, unexplained tended to show the guilt of the

accused LITTLE. Further, that he was BOUND TO EXPLAIN such mere 'possession', to show that his 'possession' was honestly acquired to remove the effect of that fact...pointing to his guilt, if he fails to do so such conduct is.. considered in determining...defendant's guilt, (See: supra, pages 33 - 36;). Furthermore, in the instant case the allegediy 'possession' of stolen property was not in the accused defendant Little's exclusive possession, but lay solely and exclusively in Mr. A. R. Hankins, who was not on Trial and had no Larceny charges against him; for the many reasons, hereinbefore pointed out, it is hard enough task for the defendant to have to assume the burden of proof and make 'satisfactory explaination' to the State and to try and make them beleive his "Satisfactory Explaination", even if he had the stolen property in his possession, and the State, Court or Jury was in a mood willing to accept as such a "Satisfactory Explaination". But Appellant

contends that it would be an impossible task to MAKE what would be an "Satisfactory Explaination" of the Unknown Acts and 'Possession' by Another.

The words on Utah's Larceny Statute are plain and capable of but one construction, it DEMANS that a person in 'possession' of stolen property must make a "SATISFACTORY EXPLAINATION", which is equivalent to 'Proof beyond a reasonable Doubt', (BANDONI v WALSTON, (Cal. App.) 179 P. 2d 365, 369.)

That Utah's Larceny Statute, by making mere 'possession' of stolen property Prima Facie Evidence of Guilt, if the person 'FAILS' to make a "SATISFACTORY EXPLAINATION" thereof and thereby uses a presumption in place of legal evidence. Thereby places the burden of proof on the Defendant to prove his innocence; and is therefore Unconstitutional under the Due Process Clause of Section One of the Fourteenth Amendment to the Constitution of the United States, which provides that:

"NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW; . . ."

See: The cases of:

PEOPLE v SCOTT, (Cal. App.) 145 P. 2d 715, 718 - 721;

In re WONG HANE, 108 Cal. 680, 682, 41 Pac. 693, 694;

TOT v UNITED STATES, 319 U. S. 463, 468 - 470, 63 S. Ct. 1241, 1243, 1245 - 1246, 87 L. Ed. 1519;

MORRISON v CALIFORNIA, 291 U. S. 82, 93 - 97, 54 S. Ct. 281, 286 - 288, 78 L.Ed.664;

HEINER v DONNAN, 285 U. S. 312, Syll. (1-3), 52 S. Ct. 358, 76 L. Ed. 772;

WESTERN a A. R. R. v HENDERSON, 279 U. S. 639, Syll. (2 - 3), Op. 642 - 644, 49 S. Ct. 445, 447 - 448, 73 L. Ed. 884;

MANLEY v GEORGIA, 279 U. S. 1, 6 - 7, 49 S. Ct. 215, 217, 73 L. Ed. 575;

McFARLANE v AMERICAN SUGAR CO., 241 U. S. 79, 86 - 87, 36 S. Ct. 498, 501, 60 L. Ed. 899;.

* * * *

In conclusion, Appellant submits that he has

shown ample and legal cause under Point One, pages 9 - 23, supra., why the Verdict and Judgment is contrary to the Evidence and Law; Under Point Two, pages 24 - 40, supra., that he was Denied a 'Fair Trial'.
And under Point Three, supra., pages 41 - 54, that the Larceny Statute is Unconstitutional.

Therefore, Appellant Prays that this Honorable Court shall Reverse this case and Order the Appellant Discharged in accordance with Law and Justice.

Respectfully Submitted By -

GORDON S. LITTLE,
Defendant and Appellant,
In Propria Persona,
Box 250, Draper, Utah.